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IN THE SUPREME COURT OF THE STATE OF IDAHO

2004 Opinion No. 33

JERROLD GOLDMAN and VARDA)	
GOLDMAN, husband and wife,)	
)	
Plaintiffs-Appellants,)	
)	
v.)	
)	Docket No. 29454
STEPHEN J. GRAHAM, O.D., BOSTON)	
EYE CENTER, L.L.C., and MIDWEST)	
SURGICAL SUPPLY, a professional)	
corporation,)	
)	
Defendants-Respondents.)	

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Blaine County. Hon. James J. May, District Judge.

The appeal is dismissed.

E. Lee Schlender, Mountain Home, for appellants.

Hall, Farley, Oberrecht & Blanton, Boise, for respondents. Richard E. Hall argued.

This case came to the Idaho Supreme Court from the district court's denial of the Goldmans' two separate requests seeking to add two additional claims to their lawsuit. In July of 2000, Dr. Graham performed cataract surgery on Dr. Goldman's left eye. After the surgery, Dr. Goldman's left eye became infected and he lost sight in that eye.

On September 20, 2001, the Goldmans sued Dr. Graham, O.D., Boston Eye Center, L.L.C., and Midwest Surgical Supply for negligence in performing the surgery. The Goldmans later asked the district court if they could add an additional claim for reckless conduct and punitive damages (which punish the defendants) to their lawsuit, to which the district court said no. A few weeks later, the Goldmans again asked the district court if they could add another claim to their lawsuit, this time for lack of informed consent. Again, the district court did not allow the Goldmans to add the claim.

Subsequent to having both of these requests denied, the Goldmans asked the district court to allow them to appeal to the Idaho Supreme Court. The district court granted their request and allowed the Goldmans to appeal the judgment of the district court. The Goldmans subsequently appealed to this Court. In their appeal to this Court, the Goldmans argue their requests to add additional claims to their lawsuit should have been granted.

The appeal to this Court is dismissed because the district court's Rule 54(b) certificate was issued in error. The Orders denying the Goldmans' two Motions to Amend were not final, appealable judgments. This Court did not address Dr. Graham's request for attorney fees because he failed to present argument in compliance with I.A.R. 35(b)(6). Costs were awarded to the Respondents.